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EXAMINER

GRAHAM, ANDREW R

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 09/10/2004

36

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

08/706,136

Applicant(s)

VANDENBELT ET AL.

Examiner

Andrew Graham

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Response to BPAI Decision***

1. With Director's approval, as required under 37 CFR 1.198, prosecution of this case has been formally re-opened. The rejections below are made in view of the BPAI decision, paper No. 35, entered March 31, 2004. The rejections made below in view of art previously presented reflect the board's affirmation of previous rejections. The rejections made below that involve new art reflect the board's reversal of previous rejections. This office action is non-final.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 3-4 and 9** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claim 3** recites the limitation "said digital sound relaxation and noise masking device" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim. Claim 1 recites a "a digital sound relaxation device", which exhibits a minor inconsistency with the phrasing cited above from Claim 3.

Art Unit: 2644

Appropriate correction is required in order to ensure that references to the components involved in the limitations are consistent.

**Claim 4** is rejected on the same basis as Claim 3 for making the same reference to a "relaxation and noise making device" in the second line of the claim.

**Claim 9** recites the limitation "relaxation and noise masking device of Claim 1" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim. Claim 1 recites a "relaxation and noise masking system", not a "device". Appropriate correction is required. It is noted that Claim 5 teaches a "device".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. **Claims 1-2, 10, and 14-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (USPN 5619179) in view of Kramer (WO 83/01705).

Smith teaches a digital sound relaxation and noise making system (10) comprising: a digital sound relaxation device having operator

Art Unit: 2644

input sound selection means (SW1,SW2) (col. 3, lines 57-65), a built in memory (e.g. the memory of the processor), the memory having preselected and prerecorded sounds selectable for individual replay ("library of stored sounds", col. 3, lines 60-63), and a sound controller (U1,U2,40) that is coupled to the memory and the operator input means and operative in built-in sounds replay mode to play any sound of the built-in memory selected via the operator input sound selection means (SW1,SW2) (col. 4, lines 48-53) and to repetitively replay sounds without disrupting pauses (col. 4, lines 53-57). Smith teaches that externally generated sound can be combined with the sound generated by the unit (10) (col. 10, lines 10-15 and 38-48). Smith does not show a collectable sound card in association with the device.

Kramer discloses that it has been well known in the art to provide a system which can provide extra, or added-on, sound entertainment from a selectable sound component (page 1 of specification, lines 8-9). Kramer teaches a card (10) similar in dimension to that of a standard credit card that includes a memory (22) with a disclosed 3.5 minutes of memory storage, and a controller (34) that controls the input and output of data from the memory (22) and responds to external commands (page 3, lines 26-29; page 4, lines 1-6; page 5, lines 2-33). The data may, in one embodiment, be passed out of the card in a digital format (page 8, lines 25-34). Such cards are disclosed for use in a playback system that may receive multiple cards, (page 10, lines 24-32 and page 11, lines 1-7). This card (10),

Art Unit: 2644

in view of the external component connection (J1) of Smith and the processing of signals by Smith, reads on "a collectable sound card".

To one of ordinary skill in the art at the time the invention was made, it would have been obvious to utilize the card system of Kramer as one of the external audio sources in the system of Smith. The motivation behind such a modification would have been that such an arrangement would have enabled additional sounds to be played through the device that are different from those included by the memories associated with the digital sound generator units of Smith.

Regarding **Claim 2**, Smith teaches that one example of an external device may be a CD player, connected to an input jack (J1) (col. 3, lines 52-56). Figure 2 of Kramer discloses one embodiment of a suitable playback apparatus for the cards (10) detailed therein. The left side of Figure 2 illustrates connectors for receiving and transmitting data (44,46) as well as power (52,50) (page 10, lines 6-16). These connectors correspond to data communication and power connections (12,13,14,15) of the card, shown in Figure 1. These connections, particularly those through which the data is passed, read on "a port for receiving said collectable sound card". The suggestion of signal inputs through a jack by Smith and the power supply connections of Kramer read on "port includes an electrical connector". The recessed and protruding connectors of the card and player of Kramer read on "card is adapted for insertion in said port and includes a connector adapted to mate with said connector of said port when inserted therewithin".

Art Unit: 2644

Regarding **Claim 10**, please refer above to the rejection of the similar limitations of Claims 1 and 2, noting that Smith discloses the inclusion of music present from the external source, given examples of which are a CD player and airline audio, and Kramer teaches that the audio may be four channels of data including voice and instrument ensembles.

Regarding **Claim 14**, please refer above to the rejection of the parallel limitations of Claim 1 and 2, noting that Smith teaches that the external source may be unplugged from the device and that an aspect of the card is that it may be separated from the playback device.

Regarding **Claim 15**, please refer above to the rejection of the parallel limitations of Claims 1 and 2 and 10, noting that Smith teaches that the external source may be unplugged from the device and that an aspect of the card is that it may be separated from the playback device.

Regarding **Claim 16**, please refer above to the rejection of the parallel limitations of Claim 1.

Regarding **Claim 17**, please refer above to the rejection of the parallel limitations of Claim 1 and 2.

Regarding **Claim 18**, please refer above to the rejection of the parallel limitations of Claim 1 and 2.

Art Unit: 2644

4. Claims 3, 5, 6, 8, 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Kramer as applied above, and further in view of Goldfarb (USPN 5145447).

As detailed above, Smith discloses a sound relaxation device with a plurality of sound selection switches (SW1,SW2) for internally stored sounds that is also able to output externally stored audio signals. These sound selection switches are able to individually access various stored sounds from the digital library of the device (10) for playback, and read on "a plurality of sound selector switches for selecting individual ones of said built-in, pre-selected and prerecorded sounds". Kramer discloses an audio storage and playback device that is able to output digital audio signals stored on credit card sized components. Smith teaches that the external audio source may be selectively connected to the jack (J1) to permit and prevent the throughput of the external audio signals. Kramer teaches that an involved playback device may receive multiple cards, through which a playback sequence may be specified (page 10, lines 30-32 and page 11, lines 1-2). Kramer also references a "juke box" style of playback, which standardly involves user controls for the selection of playback (page 12, lines 1-2).

Smith in view of Kramer does not specify:

- a sound card selector switch for reassigning said switches between said built in a said sound card sounds

However, the use of a switch to select one of a plurality of possible input sources are well known in the art. Multiple disc CD



Art Unit: 2644

players are known in the art to include buttons for selecting one of the discs for playback, while allowing the same "Play", "Stop", and "Skip" tracks to be used with each disc when it is selected for playback. Goldfarb is relied upon herein to illustrate a similar example of such selection switching. Goldfarb teaches a multiple choice sound toy, the operation of which is generally shown in Figure 4. As can be seen, the device has four operating modes, corresponding to four mode-selection buttons (24) (col. 4, lines 57-59). In certain ones of the different selected operating modes, the depression of the eight keyboard keys (13a-13h) corresponds to the output of different sets of sounds, such as musical notes and animal noises (col. 5, lines 10-22). These sounds are stored as sets of fields in a secondary memory means (col. 7, lines 43-48). As detailed above in the rejection of Claims 1 and 2, the combination of Smith and Kramer involves the storage of separate sound signals in separate memory means. In view of this arrangement of memory, the mode switches (24) and their function each read on "a sound card selector switch" for reassigning said switches between said built-in and said sound cards".

To one of ordinary skill in the art at the time the invention was made, it would have been obvious to include a mode selection switch, such as those taught by Goldfarb, to associate the sound selector switches of Smith in view of Kramer with the inputs from the different provided signal sources. The motivation behind such a modification would have been that such a switch would have made the signals from each of the sources individually selectable and playable. Smith

Art Unit: 2644

suggests a similar notion in noting that the external audio source may be unplugged if desired, but the improvement taught by Goldfarb would have not required such physical adjustment and would have enabled each of the possible sets of output to be isolated for playback. The multiple modes would have also provided the user with multiple functions based on the same input keys, as evidenced by the system of Goldfarb.

Regarding **Claim 5**, please refer above to the rejection of the similar limitations of Claims 1 and 3.

Regarding **Claim 6**, Kramer teaches that playback systems for the cards may include multiple slots for playing back the sounds contained on multiple cards (page 10, lines 30-32). The involved obtaining of multiple such cards, in view of the discussion of such cards in the rejection of Claim 1, reads on "a collectable sound card".

Regarding **Claim 8**, Smith teaches that the sounds are stored as continuous loops (col. 4, lines 51-58). Goldfarb also discloses that a single sound may be required to be recited in immediate succession (col. 7, lines 62-65). Goldfarb states that while some instances may permit the same sound to be played twice in succession, others may require a sound with a slightly different pitch or sound (col. 7, lines 65-68 and col. 8, lines 1-5). In the latter case, Goldfarb teaches that the same sound may be treated as separate selectable segments (col. 8, lines 5-7). The format of Smith and the format of Goldfarb which may be played in immediate succession, read on "the internal memory has at least one prerecorded sound digitally stored

Art Unit: 2644

therein in a "loop" format". The selectable segment format of Goldfarb in view of the immediate playback succession reads on "a plurality of addressable memory locations" and "a different part of said sound is stored at another address location". The ability to play these sound segments of both Smith and Goldfarb in immediate succession reads on "start and end locations". Smith also teaches that the beginning and end of a loop are amplitude matched, which in view of the repetitive playing, reads on "as acoustically-seamless as possible". The motivation behind the use of the format of Goldfarb for the signals involved with the loops would have been that such segments would have also been individually selectable for other playback instances.

Regarding **Claim 9**, Goldfarb teaches that the same sound may be treated as separate selectable segments, wherein the separate segments vary in terms of pitch harmony or inflection (col. 8, lines 5-7). This reads on "internal memory has at least one prerecorded sound digitally stored therein in a "sound bite" type format". The separately selectable status of the segments reads on "defining at least two groups of addressable memory locations, such that another self-contained and complete-in-itself version of the same sound is stored in each of said at least two groups of addressable memory locations" (col. 8, lines 3-7). As is shown in Figure 3, multiple such sounds (64) are output by the device. Again, such a memory arrangement would enable different versions of a sound to be

Art Unit: 2644

individually selected in correspondence with an appropriate output point.

Regarding **Claim 11**, please refer above to the rejection of the parallel limitations of Claim 9, again noting that such a memory arrangement would enable the card to contain different versions of a sound individually selectable in correspondence with an appropriate output point.

Regarding **Claim 12**, please refer above to the rejection of the parallel limitations of Claim 8, again noting that such a memory arrangement would have enabled the individual portions of a sound on the card to be separately selected and utilized.

5. **Claim 4 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Kramer and Goldfarb as applied above, and further in view of Koike (USPN 4648086).

As detailed above, Smith discloses a sound relaxation device with a plurality of sound selection switches (SW1, SW2) for internally stored sounds that is also able to output externally stored audio signals. Kramer discloses an audio storage and playback device that is able to output digital audio signals stored on credit card sized components. The card of Kramer is disclosed as being an alternative to audio cassettes or discs, which are substantially well known in the art to include labels which disclose the a list and the order of songs found on the recorded media. Goldfarb teaches the use of a mode selection switch for the selection of a set of sounds in the presence

Art Unit: 2644

of multiple input sources. The keys (13a-13h) of Goldfarb are thereby used for multiple functions, and include indicia representing the sounds that correspond to a particular key (col. 2, lines 58-63).

However, Smith in view of Kramer and Goldfarb do not clearly specify:

- corresponding indicia on the sound relaxation device and collectable sound card for associating said sound selector switches and said sounds of said collectable sound card

Koike teaches a sound reproducing device capable of reproducing a plurality of items from a disc (2). The disc (2) is inserted into the main body of the device (30) in a manner that enables an indication part (2a) of the disc (2) to still be viewed by a user (col. 3, lines 47-51). The contents of this indication part represent the recorded items as well as a correspondence to the keys (A-H) of the keyboard (30b) of the device (30) in order to enable selective playing of the sounds contained on the disc (2) (col. 3, lines 16-29 and 41-47).

Figure 1 illustrates the corresponding labeling to be the letters (A-H), found on both the keys (30b) and the indication part (2a).

To one of ordinary skill in the art at the time the invention was made, it would have been obvious to include such corresponding indicia on the keys and external media of the system of Smith in view of Kramer and Goldfarb, as is taught by Koike. The motivation behind such a modification would have been that such indicia would have

Art Unit: 2644

enabled a user to make a determinable association between an audio signal and the keys necessary for playing the same audio signal.

Regarding **Claim 7**, Figure 1 of Koike also illustrates a slit (30a) on the upper face of the upstanding side of the device (30) (col. 3, lines 38-40). This slit reads on "a housing having a top wall whereinthrough said port is provided". The motivation behind such a modification would have been that such an arrangement would have, as would be recognized by those of ordinary skill in the art, taken advantage of gravity in securing the card in a set position with the playback device, while also providing a guide for proper connection of the contact members. Such an arrangement would have also enabled the indication parts (2a) to be read from standard viewing positions. Kramer also teaches the inclusion of a slot in a playback device (page 10, lines 28-29).

6. **Claim 19** is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Kramer as applied to claims 1, 10, 14, 15, and 17 above, and further in view of Severson et al (USPN 5832431). Hereafter, "Severson et al" will be referred to as "Severson".

As detailed above, Smith discloses a sound relaxation device with a plurality of sound selection switches (SW1,SW2) for internally stored sounds that is also able to output externally stored audio signals. Kramer discloses an audio storage and playback device that is able to output digital audio signals stored on credit card sized

Art Unit: 2644

components. Smith teaches the playing of stored sounds in loop format (col. 4, lines 48-63). The connection and playing of external sounds in the system of Smith reads on "said controller is operative to play said sounds stored in said sound bite format".

However, Smith in view of Kramer does not specify:

- the storage of sounds in sound bite format that defines at least two different self-contained and complete-in-themselves versions of the same sound
- that the playing of the sound bite formatted sounds involves:
  - o randomly choosing a version of the selected sound
  - o randomly choosing a time when to replay it
  - o replaying the randomly chosen sound at the chosen time
  - o repeating the above three steps for the duration of the sound playback

Severson teaches a system that outputs continuous, randomly sequenced digital sounds. The sounds played in the system are several recorded sounds, stored in memory (307), of the same event, such as crowds at a baseball game, cattle calls, household noises, and automobile sounds (col. 4, lines 64-67; col. 7, lines 56-67; col. 8, lines 1-16; col. 10, lines 23-31 and 61-67; col. 11, lines 52-61). Figure 1 shows the breaking of a single sound into four different segments for replaying, the format of which reads on "sound bite format that define at least two different self-contained and complete in themselves versions of the same sound" (col. 4, lines 64-67 and

Art Unit: 2644

col. 5, lines 1-6 and 31-51). The address of the sound that is played in the first embodiment is randomly generated in use with a Random Signal Generator (303) (col. 12, lines 8-17). This Random Signal Generator randomly determines not only which segment will be played, but when in the on-going playing of sounds, in respect to the previously produced sequence of sounds, the segment will be played. Severson also teaches that the segments are preferably of unequal lengths (col. 5, lines 49-51). The baseball game example is disclosed as following a "story line" which defines both direction and theme of an output sound production (col. 12, lines 54-62). Severson also notes a particular situation wherein the delay between the playing of sound is randomly determined, which parallels the random sequencing of sounds (col. 11, lines 52-59). Collectively, these teachings of Severson read on "randomly choosing a version of selected sound" and "randomly choosing a time when to replay it". The playing of the sounds is described as continuously and randomly sequenced (col. 11, lines 59-61). This reads on "replaying the randomly chosen version of the sound selected at the randomly chosen time" and "repeating (1) through (3) for the duration of the playback".

To one of ordinary skill in the art at the time the invention was made, it would have been obvious to utilize the random sequencing scheme and signal format of Severson for the storage and playing of sounds in the system of Smith in view of Kramer. The motivation behind such a modification would have been that playing repeating such



Art Unit: 2644

sounds would have made the sound effect more realistic, similar to the natural states of sounds.

7. **Claim 19** is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Kramer and Goldfarb as applied to claim 5 above, and further in view of Severson et al (USPN 5832431). Hereafter, "Severson et al" will be referred to as "Severson".

As detailed above, Smith discloses a sound relaxation device with a plurality of sound selection switches (SW1,SW2) for internally stored sounds that is also able to output externally stored audio signals. Kramer discloses an audio storage and playback device that is able to output digital audio signals stored on credit card sized components. Smith teaches the playing of stored sounds in loop format (col. 4, lines 48-63). The connection and playing of external sounds in the system of Smith reads on "said controller is operative to play said sounds stored in said sound bite format". Goldfarb teaches the use of a mode selection switch for the selection of a set of sounds in the presence of multiple input sources.

However, Smith in view of Kramer and Goldfarb does not specify:

- the storage of sounds in sound bite format that defines at least two different self-contained and complete-in-themselves versions of the same sound
- that the playing of the sound bite formatted sounds involves:
  - o randomly choosing a version of the selected sound

Art Unit: 2644

- o randomly choosing a time when to replay it
- o replaying the randomly chosen sound at the chosen time
- o repeating the above three steps for the duration of the sound playback

Severson teaches a system that outputs continuous, randomly sequenced digital sounds. The sounds played in the system are several recorded sounds, stored in memory (307), of the same event, such as crowds at a baseball game, cattle calls, household noises, and automobile sounds (col. 4, lines 64-67; col. 7, lines 56-67; col. 8, lines 1-16; col. 10, lines 23-31 and 61-67; col. 11, lines 52-61). Figure 1 shows the breaking of a single sound into four different segments for replaying, the format of which reads on "sound bite format that define at least two different self-contained and complete in themselves versions of the same sound" (col. 4, lines 64-67 and col. 5, lines 1-6 and 31-51). The address of the sound that is played in the first embodiment is randomly generated in use with a Random Signal Generator (303) (col. 12, lines 8-17). This Random Signal Generator randomly determines not only which segment will be played, but when in the on-going playing of sounds, in respect to the previously produced sequence of sounds, the segment will be played. Severson also teaches that the segments are preferably of unequal lengths (col. 5, lines 49-51). The baseball game example is disclosed as following a "story line" which defines both direction and theme of an output sound production (col. 12, lines 54-62). Severson also notes a particular situation wherein the delay between the playing of

Art Unit: 2644

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To one of ordinary skill in the art at the time the invention was made, it would have been obvious to utilize the random sequencing scheme and signal format of Severson for the storage and playing of sounds in the system of Smith in view of Kramer and Goldfarb. The motivation behind such a modification would have been that playing repeating such sounds would have made the sound effect more realistic, similar to the natural states of sounds.

### **Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Martin (USPN 5648753) teaches an interchangeable sound effect device.

Weiner (USPN 4820233) discloses a sound producing device with various embodiments, one of which is shown in Figure 11, wherein keys (127, 128) are used to select various memory segments, and the same key (129) is used to reproduce the sound segment.


Art Unit: 2644

Takeya et al (USPN 4899326) discloses a multi-disc CD player system that uses the same inputs to select between multiple magazines of discs, multiple discs in a magazine, and multiple tracks on a disc.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Graham whose telephone number is 703-308-6729. The examiner can normally be reached on Monday-Friday, 8:30 AM to 5:00 PM (EST).

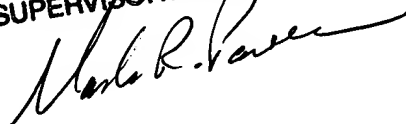
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Isen can be reached on (703)305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Andrew Graham  
Examiner  
A.U. 2644

ag  
August 31, 2004

  
FORESTER W. ISEN  
SUPERVISORY PATENT EXAMINER

  
DIRECTOR 2600